

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**DV DIAMOND CLUB OF FLINT, LLC
d/b/a Little Darlings, et al.**

Plaintiffs, **Case No. 4:20-cv-10899**
v. **Hon. Matthew F. Leitman**
UNITED STATES SMALL BUSINESS
ADMINISTRATION, et al. **Hon. David R. Grand**
by referral

Defendants.

**DECLARATION OF MATTHEW J. HOFFER, ESQ.
RE: AUTHENTICATION OF DOCUMENTS**

This declaration and the exhibits hereto will be filed under seal because they contain sensitive email addresses and banking information that would be damaging to the Plaintiffs and their relationships with their lenders if filed publically, as will be described in greater detail in a separately filed motion.

I, Matthew J. Hoffer, hereby declare as follows:

1. I make this declaration upon my personal knowledge, unless specifically stated to the contrary.
2. I am an attorney duly licensed to practice in the State of Michigan and in the United States District Court for the Eastern District of Michigan and am counsel for all Plaintiffs in this above-captioned matter.

3. This declaration is provided in response to the Court's concerns, as expressed during the on-the-record video conference of April 20, 2020 and as understood by the undersigned, and to otherwise provide further proof that the challenged Regulation [First Amended Complaint, ECF No. 11, ¶ 62, PgID.252] and SOP [id. at ¶69, PgID. 254] stand as an obstacle that, once removed, would allow the Plaintiffs to obtain meaningful relief.

4. This declaration is also provided in recognition that application of the Federal Rules of Evidence is relaxed for purposes of the Court considering a motion for temporary restraining order or preliminary injunction. *See, e.g., Doe #1 by and through Lee v. Sevier County, Tennessee*, 3:17-CV-41, 2017 WL 1089185, at *2 (E.D. Tenn. Mar. 20, 2017) (collecting cases); University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). This declaration also serves to confirm that the undersigned affirms the exhibits attached hereto are what they appear to me.

5. Attached hereto as **Exhibit 1** is a true and accurate copy of email correspondence between [REDACTED], Chief Lending Officer with [REDACTED] and the undersigned. ParkeBank is the PPP lender for Plaintiffs 2740 Corporation; MAG Enterprises, Inc.; and Filosadelfia, LLC, and (I understand) is available as a lender to Plaintiff MAG Pitt LP.

6. In **Exhibit 1**, [REDACTED] writes, *inter alia*:

a. In response to be asked how or when the processing of the applications for PPP loans stopped, responded: “It stopped as soon as they got to me based on the guidelines issued by the SBA stating that Gentleman’s Clubs would be ineligible for the PPP Program.” [p. 3].

b. “John Meehan and his businesses are great clients of the bank and we would absolutely process their PPP loan requests of the SBA/government allowed us to do so.”

7. Attached hereto as **Exhibit 2** is a true and accurate copy, as received by the undersigned, from [REDACTED] and relating to Plaintiffs Burch Management Co., Inc.; DB Entertainment, Inc.; BDS Restaurant, Inc.; T and N Incorporated; Millennium Restaurants Group, Inc.; and BDS Restaurant, Inc.

8. **Exhibit 2** states, in part: “The following business[es] were denied access to funds from the SBA Pay[check] Protection Program due [to] SBA guidance and regulation[s].” (Clarification added). The letter further cites to 13 C.F.R. § 120.110(p).

9. Attached hereto as **Exhibit 3** is a true and accurate copy, as received by the undersigned, of correspondence issued to Ms. Kathy Vercher, President of Spearmint Rhino Consulting Worldwide, Inc. from a representative of [REDACTED]

[REDACTED] and relating to the PPP loans sought by the Spearmint Rhino-related entities listed on Appendix A thereto. The loan amounts on Appendix A are redacted because the loan amounts are confidential information not be shared beyond counsel for those entities and Shafer & Associates, P.C.

10. **Exhibit 3** cites to the Regulation and the SOP and states:

Our understanding is that these Regulations apply to PPP loans, and that the Entities are within the category of business that are included in the “prudent sexual nature” exclusion. Therefore, the Entities are not eligible to participate in the PPP.

11. Attached at **Exhibit 4** is a true and accurate copy, as received by the undersigned, of text messages purporting to be between Asher Sullivan of JCB of Gainesville and an employee of [REDACTED].

12. As reflected in **Exhibit 1**, I experienced significant resistance from the lenders when I or persons acting on my behalf asked them to execute a declaration setting forth the mechanism of the denial and, correspondently, that the PPP loan would be issued but for the SBA regulations or guidance. As to **Exhibit 1**, I am informed that this lender and its clients have an excellent relationship and that was consistent with my experience. Still, the lender was not willing to have a representative voluntarily provide a 28 U.S.C. § 1746 sworn declaration.

13. [REDACTED], is another example. I was immediately referred to legal counsel, who declined to allow a lender representative to provide a declaration setting forth reasons why Plaintiff Polmour, Inc.'s PPP loan was denied. Thus, the declaration of Polmour's manager is provided to recount his experience.

14. I verily believe, based on my knowledge and experience, that these lenders, but for the issues presented by the challenged Regulations, would be happy to process the loans for their clients and perhaps even happier to accept the commission. However, it is also my certain belief, based on my experience contacting these lenders and my experience representing adult businesses for over a decade, that they do not wish to be caught between the Plaintiffs and the federal government, let alone publically in a federal lawsuit filed by gentlemen's clubs.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: April 26, 2020

/s/ Matthew J. Hoffer
By: Matthew J. Hoffer

Matt Hoffer

From: [REDACTED]
Sent: Thursday, April 23, 2020 1:42 PM
To: Matt Hoffer
Cc: John Meehan [REDACTED]
Subject: RE: John Meehan/Cheerleaders

Matt,

Under advise from our counsel, I cannot sign this form. John Meehan and his businesses are great clients of the bank and we would absolutely process their PPP loan requests if the SBA/government allowed us to do so. We finance his clubs currently and will continue to do so.

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]

From: Matt Hoffer <Matt@bradshaferlaw.com>
Sent: Wednesday, April 22, 2020 6:19 PM
To: [REDACTED]
Cc: John Meehan [REDACTED]
Subject: RE: John Meehan/Cheerleaders

[REDACTED]
I caught a typo. Updated version attached.

Thank you again for your time.

Regards,

Matt

Matthew J. Hoffer

Attorney at Law
SHAFER & ASSOCIATES, P.C.
3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906
Telephone: (517) 886-6560
Facsimile: (517) 886-6565

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From: Matt Hoffer
Sent: Wednesday, April 22, 2020 6:15 PM
To: [REDACTED]
Cc: John Meehan [REDACTED]
Subject: RE: John Meehan/Cheerleaders

Nick,

Attached is a copy of the declaration I am asking that you sign. Please have your counsel review and let me know if you have any concerns. I'm happy to work through any concerns you or your counsel may have.

Thank you very much for your time and attention.

Regards,

Matt

Matthew J. Hoffer
Attorney at Law
SHAFER & ASSOCIATES, P.C.
3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906
Telephone: (517) 886-6560
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From: [REDACTED]
Sent: Wednesday, April 22, 2020 4:24 PM
To: Matt Hoffer <Matt@bradshaferlaw.com>

Cc: John Meehan [REDACTED]

Subject: RE: John Meehan/Cheerleaders

It stopped as soon as they got to me based on the guidelines issued by the SBA stating that Gentleman's Clubs would be ineligible for the PPP program.

From: Matt Hoffer <Matt@bradshaferlaw.com>

Sent: Wednesday, April 22, 2020 4:22 PM

To: [REDACTED]

Cc: John Meehan [REDACTED]

Subject: RE: John Meehan/Cheerleaders

Perfect. Thank you for getting back to me.

I will prepare the document and send it over.

Can you describe for me where the applications stopped or how YOU would how the applications stopped. Is it that the applications couldn't be processed or could not be submitted to the SBA for processing?

I value both our time and would like to avoid sending multiple drafts.

Thanks,

Matt

Matthew J. Hoffer
Attorney at Law
SHAFER & ASSOCIATES, P.C.
3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906
Telephone: (517) 886-6560
Facsimile: (517) 886-6565

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From: [REDACTED]

Sent: Wednesday, April 22, 2020 4:17 PM

To: Matt Hoffer <Matt@bradshaferlaw.com>

Cc: John Meehan [REDACTED]

Subject: RE: John Meehan/Cheerleaders

Matt,

Please let me know what exactly you would like and the wording, and I will run it by our legal counsel to see if it is okay for us to provide.

Thank you,

[REDACTED]

From: Matt Hoffer <Matt@bradshaferlaw.com>

Sent: Wednesday, April 22, 2020 4:15 PM

To: [REDACTED]

Cc: John Meehan [REDACTED]

Subject: John Meehan/Cheerleaders

Importance: High

[REDACTED]

Greetings. My name is Matt Hoffer and I am attorney for several of John Meehan's businesses. I called and left voice mails for you yesterday and today but have not received a response. I understand from Mr. Meehan that you were expecting my call.

My partner Brad Shafer and I have filed suit on behalf of numerous clubs and against the Small Business Administration. We are challenging the regulations that exclude businesses that present or derive income from the presentation of "prurient" entertainment from receiving Paycheck Protection Program loans.

Three of Mr. Meehan's businesses (2740 Corporation; MAG Enterprises, Inc.; and MAG Pitt LP) are plaintiffs in the suit. I understand that 2740 Corporation and MAG Enterprises sought PPP loans through [REDACTED]

In preparing to rule on our motion for emergency relief, the Judge has requested that Plaintiff provide proof that if the Court were to invalidate the challenged regulations, that it could result in the loans being issued. I am advised that the SBA has reserved funds to allow that to occur.

I write to ask you to provide a declaration that the reason [REDACTED] was unable to process the PPP loans was due to the restrictions on "prurient" businesses. I will work with you to prepare the document so it is accurate and does not raise any concerns with the bank.

In addition, it is worth noting that the suit has not named any banks as defendants, nor is there any plan to do so. The goal is to obtain relief against the SBA, which will allow the lender banks to function as if the regulation did not exist.

Thank you for your time and attention. I will look forward to speaking with you. I can be best reached on my mobile, 517-303-5511.

Regards,

Matt

Matthew J. Hoffer
Attorney at Law
SHAFER & ASSOCIATES, P.C.
3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906
Telephone: (517) 886-6560
Facsimile: (517) 886-6565

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April 22, 2020
Duncan Burch and Gene LeClaire
P.O. Box 542225
Dallas, TX 75354-225

To Whom it May Concern,

The following business were denied access to funds from the SBA Pay Protection Program due SBA guidance and regulation.

Burch Management Co., Inc.
DB Entertainment, Inc.
T&N Incorporated
Millennium Restaurants Group, Inc.
BDS Restaurant, Inc.

15. Businesses Providing Prurient Sexual Material ([13 CFR § 120.110 \(p\)](#))

- a. A business is not eligible for SBA assistance if:
 - i. It presents live or recorded performances of a prurient sexual nature; or
 - ii. It derives more than 5% of its gross revenue, directly or indirectly, through the sale of products, services or the presentation of any depictions or displays of a prurient sexual nature.
- b. SBA has determined that financing lawful activities of a prurient sexual nature is not in the public interest. The Lender must consider whether the nature and extent of the sexual component causes the business activity to be prurient.

Please feel free to contact me if you have any questions in regard to this letter by e-mail at [REDACTED].

Thanks,



[REDACTED]

April 22, 2020

VIA U.S. MAIL and EMAIL: [REDACTED]

Ms. Kathy Vercher
President
Spearmint Rhino Consulting Worldwide, Inc.
1875 Tandem Way
Norco, CA 92860

RE: Payroll Protection Program (“PPP”) Loans

Dear Ms. Vercher:

Following up on your inquiry, we are in receipt of various Form 2483 applications from Spearmint Rhino related entities identified on Appendix A attached hereto (the “Entities”) for loans from the United States Department of Treasury under the PPP.

However, 13 C.F.R. Section 120.110(p) and/or Small Business Administration (“SBA”) SOP 50 10 5(K), Ch. 2(III)(A)(15) (the “Regulations”) bars SBA loans under the PPP to businesses that present, or derive a non-*de minimis* portion of their gross revenues directly or indirectly from, entertainment that is of a “prurient sexual nature.” Our understanding is that these Regulations apply to PPP loans, and that the Entities are within the category of business that are included in the “prurient sexual nature” exclusion. Therefore, the Entities are not eligible to participate in the PPP.

Should you have any further questions, comments or concerns please feel free to contact the undersigned at your convenience.

Very truly yours,

[REDACTED]

APPENDIX A

Name of Business	Contact Information	Loan Amount	TCB Lender
Brookhurst Venture LLC	Amber Vander Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler
City of Industry Hospitality Venture Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler
Farmdale Hospitality Services Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler
High Expectations Hospitality LLC	Amber Vander Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler
Inland Restaurant Venture I Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler
Kentucky Hospitality Venture LLC	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler
K-Kel Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler
LCM LLC	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	Lynn Fowler

Name of Business	Contact Information	Loan Amount	TCB Lender
Midnight Sun Enterprises Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Nitelife Inc.	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Olympic Avenue Venture Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Platinum SJ Enterprise	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
PNM Enterprises Inc	Amber Vander Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Rialto Pockets Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Rouge Gentlemen's Club Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Santa Barbara Hospitality Services Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Santa Maria Restaurant Enterprises Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]

Name of Business	Contact Information	Loan Amount	TCB Lender
Saries Lounge LLC	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Spearmint Rhino Adult Superstore Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Spearmint Rhino Companies Worldwide Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Spearmint Rhino Consulting Worldwide Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
The Oxnard Hospitality Services Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
Washington Management LLC	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
World Class Venues LLC	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]
WPS Entertainment Inc	Amber Heul VP Accounting [REDACTED] 951.371.3788 x215	[REDACTED]	[REDACTED]



Gary Edinger <gsedinger12@gmail.com>

Café PPP loan denied

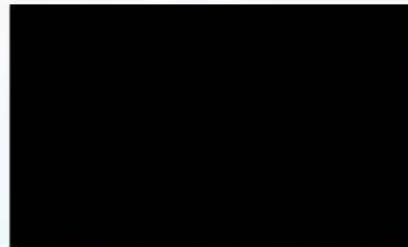
1 message

asher sullivan [REDACTED]

Tue, Apr 14, 2020 at 1:21 PM

To: Gary Edinger <gsedinger12@gmail.com>
[REDACTED]

1:19 ↗



Sullivan with SSB of California

over the weekend [REDACTED]

[REDACTED] with [REDACTED] gave me
your number I was trying to get
in contact with someone about
my PPP loan I know you aren't
the one assigned to it

unfortunately I would have liked
to have worked with you [REDACTED]

had great things to say about
you I will be filing soon for my
other company and would like
to do it with you all that said if
there is anything you can do To
help me get in contact with the

person going over my current application I would greatly appreciate feel free to call or text me anytime it thanks and have a great day

Asher

Delivered

Today 1:08 PM

Hey Asher, based on the business type and income type it does not qualify for the PPP loan.



iMessage

